No. 15-274

IN THE

Supreme Court of the United States

WHOLE WOMAN'S HEALTH ET AL.,
Petitioners,

v.

KIRK COLE, M.D., COMMISSIONER OF THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF *AMICI CURIAE* THE TEXAS ASSOCIATION AGAINST SEXUAL ASSAULT, THE BLACK WOMEN'S HEALTH INITIATIVE, THE NATIONAL SEXUAL VIOLENCE RESOURCE CENTER, MELISA HOLMES, M.D., AND PROFESSOR MARGARET DREW IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae submit this brief in support of Petitioners. The *amici curiae* are concerned that the restrictive provisions of H.B. 2, the 2013 Texas statute at issue, will result in the closure of more than 75% of clinics that provide abortion services, including all but one clinic outside Texas' four largest cities. *See* H.B. 2, 83d Leg., 2d C.S. (2013); Tex. Health & Safety Code Ann. § 171.031; Tex. Health & Safety Code Ann. § 245.010-245.011. These closures will, in many cases, severely restrict, if not effectively eliminate, access to abortion for already traumatized rape victims seeking to terminate their rape-related pregnancies.

Amicus curiae Texas Association Against Sexual Assault (TAASA) is a non-profit organization committed to ending sexual violence in Texas. Its membership includes approximately 80 rape crisis centers throughout the state of Texas. Focused on education, prevention, and advocacy on behalf of victims, TAASA strives to reduce sexual assault of all types, including rape. Since 1982, TAASA has worked to bring hope, healing, and justice to victims of sexual assault. As part of that mission, TAASA strongly supports policies that ensure victims of sexual assault have access to the resources necessary for their mental, emotional, and physical well-being.

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[1] Pursuant to Rules of the Supreme Court of the United States Rule 37.6, *amici curiae* certify that no counsel for a party authored this brief in whole or in part and that no person or entity, other than *amici*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Correspondence from the parties consenting to the filing of this brief have been filed with the Clerk of this Court.

TAASA has a substantial interest in this case. Implementation of the challenged provisions of H.B. 2 will further harm the already traumatized rape victims served by TAASA's members. TAASA's member programs inform rape victims of all services and assistance available to them, seeking to empower them to decide how best to recover and heal. Because implementation of H.B. 2 would severely limit crucial options available to victims, TAASA members and their counselors will find it harder to help rape victims in dealing with their trauma. Moreover, depriving rape victims of access to nearby abortion clinics is likely to compound their perception of a lack of support from authorities and the state itself. Such a perception will also discourage rape victims from participating in the criminal justice system and increase their risk of further assaults, especially when the perpetrators are abusive husbands or boyfriends.

Amicus curiae The Black Women's Health Imperative is the only national organization dedicated to improving the health and wellness of the nation's 21 million Black women and girls – physically, emotionally and financially. It seeks to advance health equity and social justice for Black women through policy, advocacy, education, research and leadership development. The organization has championed reproductive health for all women and informed choice for legal and safe abortions for 32 years. Women have the right to decide what is best for their bodies and their families and they should not be penalized because of their race or socioeconomic status. The challenged provisions of H.B. 2 violate this right. They will most heavily impact Black women and other women of color, effectively forcing many poor Black women to have children they cannot afford,

making it more likely they – and their children – will remain in poverty for the rest of their lives.

Amicus curiae the National Sexual Violence Resource Center (NSVRC) has since 2000 led the U.S. in providing professional support to local and state anti-sexual violence organizations. NSVRC collaborates with partners nationwide to create research-based resources that focus on how to prevent and respond to sexual violence. NSVRC promotes diversity and the treatment of all people with dignity and respect, with full autonomy over their own bodies and sexual expression. NSVRC believes that sexual violence is rooted in power inequities and connected to other forms of oppression that value certain people or groups over others. NSVRC uses its national leadership position to promote dialogue and understanding of sexual violence and its prevention. NSVRC opposes the underlying oppressive intent of the challenged provisions of H.B. 2 which would curtail access to women's health choices, particularly those women who are under-resourced and isolated from services of any kind.

Amicus curiae Melisa M. Holmes, M.D., a Fellow of the American Congress of Obstetricians and Gynecologists, is the lead author of "Rape-Related Pregnancy: Estimates and Descriptive Characteristics From a National Sample of Women," and numerous other monographs and articles. She is a practicing Pediatric & Adolescent Gynecologist and co-founder of an organization providing health and sex education to adolescents. She received her medical degree from the Medical College of Georgia before joining the faculty at the Medical University of South Carolina, where she held joint appointments in Obstetrics/Gynecology and Pediatrics. Dr. Holmes has spent over a decade

working with the National Crime Victims Center on topics related to acute and follow-up medical care of sexual assault survivors.

Amicus curiae Professor Margaret Drew is a nationally recognized expert on violence against women. She is Associate Professor and Director of Clinics and Experiential Learning at the University of Massachusetts Law School, where she has directed the Domestic Violence and Civil Protection Order Clinics for 12 years. Previously, she directed domestic violence clinics at the University of Cincinnati College of Law, the University of Alabama College of Law and Northeastern University School of Law. For 20 years, she has been active with the American Bar Association's Commission on Domestic and Sexual Violence, and has served as its chair. Professor Drew has represented survivors of intimate partner violence and sexual assault since 1981, including abused women denied control over reproductive decisions vital to their health and independence. She also trains judges, lawyers, medical personnel and others on the dynamics of abuse and related topics. Professor Drew's research and experience establishes that reproductive autonomy is essential to ending gender-based violence.

SUMMARY OF ARGUMENT

The challenged provisions of Texas' latest anti-abortion law, H.B. 2, will restrict access to abortions for all Texas women. By imposing the dual requirements that abortion physicians have local hospital admitting privileges and that clinics satisfy the stringent standards of ambulatory surgery centers, H.B. 2 will force closure of all but ten abortion clinics in Texas, including all but one clinic outside of the four largest cities. The burden of these restrictions will fall particularly heavily upon pregnant rape victims.

Due to their circumstances, rape victims have historically been viewed as being entitled to abortions even when other women were denied access.

Rape victims without access to nearby legal abortion services will likely be forced to bear the children of their rapists. Reducing access to abortion services deprives rape victims of the right to exert control over their own bodies, thereby re-traumatizing them. Rape victims also fall disproportionately within the intersection of poverty, minority status, domestic violence, and reproductive coercion, all of which serve to compound H.B. 2's restrictions on access. By eliminating nearby clinics for women outside the major cities, the provisions and regulations of H.B. 2 impose an additional, significant obstacle that will make it materially harder for those rape victims to obtain early abortions during the weeks in which they are already dealing with the post-traumatic stress of the rape itself. H.B. 2 thus imposes an unconstitutionally undue burden on the right of victims of rape-related pregnancies to obtain safe, legal abortions in Texas in violation of their due process right to liberty as enunciated in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

ARGUMENT

I. TEXAS SHOULD NOT BE PERMITTED TO UNDERMINE *PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA V. CASEY* BY CREATING BARRIERS THAT RESTRICT ACCESS TO ABORTION.

Texas H.B. 2 imposes new, burdensome restrictions on abortion providers in Texas. These additional restrictions include (a) requiring physicians who perform or induce abortions to have admitting privileges at a hospital located not more than 30 miles from the location at which the abortion is performed or induced and (b) requiring abortion facilities to meet most of the standards for ambulatory surgical centers under Texas law. The combined effect of H.B. 2 and its regulations would force more than 75 percent of Texas's abortion clinics to close. These closures will have a profound detrimental effect on sexual assault victims in Texas.

An estimated 18.3% of American women are raped during their lifetimes,[2] and among women living in Texas, the lifetime prevalence of rape or attempted rape is nearly 28%.[3] The most recent data for Texas

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[2] M. Black, et al., Centers for Disease Control, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report* 1 (2011),http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf (*"CDC 2010 National Sexual Violence Report"*).

[3] N. Busch-Armendariz et al., U. of Texas Inst. on Domestic Violence & Sexual Assault, *Health and Well-Being: Texas Statewide Sexual Assault Prevalence* 31 (2015), https://utexas.app.box.com/prevalence-study-final-report (*"2015 Texas Report"*).

found that up to 10% of rapes resulted in pregnancy.[4] Other studies also show that rapes result in unwanted pregnancies at higher rates compared with the 2-4% rate usually attributed to consensual intercourse.[5] By making access to abortion services more difficult or effectively impossible, enforcement of the challenged restrictions of H.B. 2 will force Texas women who have survived rape to carry unwanted pregnancies for longer periods or to full term, or even be driven to attempt self-abortion. Being deprived of access to safe abortions will inflict unnecessary and significant additional emotional and physical harm on women who have already been forced to endure the substantial trauma of the rape itself.

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), this Court grounded a woman's right to an abortion in her right to liberty under the Due Process Clause of the Fourteenth Amendment. *Id.* at 846. As framed in that case, "[t]he underlying constitutional issue is whether the State can resolve these philosophic questions [about the morality of abortion] in such a definitive way that a woman lacks all choice in the matter, except perhaps in those rare circumstances in which the pregnancy itself is a danger to her own life or health, or is the

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[4] *Id.* at 27.i.

[5] J. Gottschall et al., *Are Per-Incident Rape-Pregnancy Rates Higher than Per-Incident Consensual Pregnancy Rates?*, 14 HUMAN NATURE 1, 4 (2003) ("*Rape-Pregnancy Rates*") ("[E]ven before adjusting for birth control usage, per incident rape-pregnancy rates (6.42%) are notably higher than per-incident consensual pregnancy rates (3.1%)."). Factors contributing to the higher conception rate following rape include the woman's inability to choose not to have sex during ovulation and lower likelihood of contraception use. *Id.* at 3, 11.

result of rape or incest." *Id.* at 850-51. The Court held that "[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right" of the woman "to make the ultimate decision." *Id.* at 877-78. "[T]he liberty of the woman is at stake" in every pregnancy, because carrying a pregnancy to term imposes physical constraints, pain, and suffering unique to the child-bearing process, such that the decision whether to terminate a pregnancy should largely be left to the woman herself. *Id.* at 852.

Access to abortion is even more critical for rape victims. Rape inherently involves violation of the victim's liberty by her rapist. A pregnancy resulting from rape further exacerbates the violation of the woman's liberty, whether the pregnancy lasts weeks or months. The State should not compound the injury by denying her reasonable access to a safe abortion, thereby forcing the woman to endure further victimization. For this reason, rape-related pregnancies have been a rare exception to general policies barring abortion.[6]

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[6] For example, the American Medical Association's 1967 policy designated pregnancies due to rape or incest as circumstances in which a physician could properly perform an abortion. *See Roe v. Wade*, 410 U.S. 113, 143 (1973). Since 1976, a "Hyde Amendment" has been attached to annual appropriations legislation to prohibit the use of federal funds for abortions *except* where the pregnancy resulted from rape or incest, or threatened the mother's life. *See* Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 409 for the current Hyde Amendment. *See also* H. Boonstra, *The Heart of the Matter: Public Funding of Abortion for Poor Women in the United States*, 10 GUTTMACHER POL'Y REV. 12 (2007), https://www.guttmacher.org/pubs/gpr/10/1/gpr100112.html.

Casey specifically recognized that victims of spousal rape may find themselves in a particularly difficult position if they wish to terminate a resulting pregnancy against the wishes of their husbands. For them, Pennsylvania's requirement of spousal consent imposed a substantial obstacle, not a mere inconvenience. Even if spousal rape victims only accounted for 1% of the women seeking abortions, the resulting undue burden upon them rendered the spousal consent statute unconstitutional as to all women. *Id.* at 893-95. As the Court noted:

> For the great many women who are victims of abuse inflicted by their husbands, or whose children are the victims of such abuse, a spousal notice requirement enables the husband to wield an effective veto over his wife's decision. Whether the prospect of notification itself deters such women from seeking abortions, or whether the husband, through physical force or psychological pressure or economic coercion, prevents his wife from obtaining an abortion until it is too late, the notice requirement will often be tantamount to the veto found unconstitutional in *Danforth*. The women most affected by this law—those who most reasonably fear the consequences of notifying their husbands that they are pregnant—are in the gravest danger.

Id. at 897.

The principles of *Casey* control here. The Court should be particularly mindful of the impact of challenged provisions and regulations of H.B. 2 on women whose pregnancies result from rape and domestic violence.

II. BY SEVERELY RESTRICTING ACCESS TO ABORTION, H.B. 2 WILL CAUSE SIGNIFICANT HARM TO RAPE VICTIMS.

Sadly, sexual assault and rape are not uncommon in the United States as a whole or in the state of Texas. Whether committed by a family member, acquaintance, or stranger, available statistics show that rape affects nearly 20 percent of American women, and nearly 30 percent of women in Texas. Many other rapes likely go unreported. Certain populations, including young and college-aged women, racial and ethnic minorities, low-income women, women with developmental disabilities, and women in rural areas, are especially vulnerable.

Women who are raped usually experience significant trauma, which is only compounded by an unwanted pregnancy. H.B. 2's restrictions will force many rape survivors to carry unwanted pregnancies for longer periods of time, or cut off their access to abortion services altogether.

A. Recent Studies Document the Widespread Incidence of Rape and Other Sexual Assaults.

The Centers for Disease Control and Prevention estimate that "nearly 1 in 5 women has been raped in her lifetime, . . . [which] translates to almost 22 million women in the United States."[7] In 2010, the CDC estimated that 1.27 million adult women were raped in this country.[8] In 2011, that figure rose to

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[7] *CDC 2010 National Sexual Violence Report* at 1.

[8] *Id.* at 18.

approximately 1.9 million.[9] These figures, however, actually understate the total incidence, because they exclude rapes of minors under 18, who account for about 44% of rape victims.[10] The prevalence of rape is no different in Texas, where the most recent study found that, asking broader questions about rape or attempted rape, approximately 27.6% of women have been victims at some point in their lifetimes.[11] This figure represents an increase from 20% in 2003.[12]

While these numbers are staggering, they represent only those rapes that are actually reported. Nationally, an estimated 50% of rapes go unreported.[13]

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[9] Centers for Disease Control and Prevention, *National Data on Intimate Partner Violence, Sexual Violence, and Stalking* 1 (2014), http://www.cdc.gov/violenceprevention/pdf/nisvs-factsheet-2014.pdf; M. Breiding et al., Centers for Disease Control and Prevention, *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization—National Intimate Partner and Sexual Violence Survey, United States, 2011* (2014), http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm (last visited Dec. 30, 2015) (*"CDC 2011 National Sexual Violence Report"*).

[10] L. Greenfeld, U.S. Dep't of Justice, Bureau of Justice Statistics, *Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault*, 3 (1997), http://www.mincava.umn.edu/documents/sexoff/sexoff.pdf (*"Sex Offenses and Offenders"*).

[11] *2015 Texas Report* at 31.

[12] N. Busch et al., U. of Texas Inst. on Domestic Violence & Sexual Assault, *A Health Survey of Texans: A Focus on Sexual Assault – Final Report* 11 (2003), https://socialwork.utexas.edu/dl/files/cswr/institutes/idvsa/publications/study.pdf (*"2003 Texas Survey"*).

[13] R. Bachman, U.S. Dep't of Justice, Bureau of Justice Statistics, *Violence Against Women: A National Crime Victimization Survey Report* 9 (1994), https://www.

Recent studies suggest that underreporting is actually much higher.[14] Non-reporting often occurs because women regard rape as a personal matter or fear retaliation.[15] Not only do victims often not report rape to legal authorities, but they also often do not disclose the rape even to their own families.[16] Many rape victims remain silent because they are ashamed, because they are concerned that their credibility will be questioned, or because they fear they will be blamed

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ncjrs.gov/pdffiles1/digitization/145325ncjrs.pdf, ("*BJS Crime Victimization Report*").

[14] P. Tjaden et al., U.S. Dep't of Justice, Bureau of Justice Statistics, *Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey* 33 (2006), https://www.ncjrs.gov/pdffiles1/nij/210346.pdf (only 19.1 percent of the adult women said their rape was reported to the police); *see also* J. Truman et al., U.S. Dep't of Justice, Bureau of Justice Statistics, *Criminal Victimization, 2011* 8 (2012), http://www.bjs.gov/content/pub/pdf/cv11.pdf (percent of victimizations reported to the police for rape in 2002, 2010, and 2011 were 55%, 49%, and 27%, respectively); M. Planty et al., U.S. Dep't of Justice, Bureau of Justice Statistics, *Female Victims of Sexual Violence, 1994-2010*, 7 (2013), http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf ("*Female Victims of Sexual Violence, 1994-2010*") ("36% of rape or sexual assault victimizations reported to police in 2005-10"); J. Truman et al., U.S. Dep't of Justice, Bureau of Justice Statistics, *Criminal Victimization, 2014* 7 (2015), http://www.bjs.gov/content/pub/pdf/cv14.pdf (percent of victimizations reported to the police for rape in 2005, 2013, and 2014 were 35.1%, 34.8%, and 33.6%, respectively).

[15] *BJS Crime Victimization Report* at 9.

[16] National Victim Ctr. & Med. U. of S.C., *Rape in America: A Report to the Nation* 9 (1992), http://tinyurl.com/hh53lkz (last visited Dec. 30, 2015) (rape victims reported concerns about their family knowing that they have been sexually assaulted).

for what happened to them.[17] The decision not to report may also be caused by a more primal fear of potentially lethal retaliation by the perpetrator, particularly where the women "were victimized by a current or former boyfriend or husband."[18]

Unlike the CDC studies and other national research cited above, Texas data do not always break out statistics on rape alone, but rather examine the broader category of "sexual assaults," including rape, attempted rape, sexual battery and other types of sex-related assaults. The most recent Texas survey indicates that only about 9% of sexual assaults of all types are reported to law enforcement.[19] Due to low reporting of sexual violence in general, the actual incidence of completed rape in Texas is difficult to

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[17] *CDC 2010 National Sexual Violence Report* at 4; *see also* M. Koss et al., *Depression and PTSD in Survivors of Male Violence: Research and Training Initiatives to Facilitate Recovery*, 27 PSYCHOL. OF WOMEN Q. 130, 137 (2003) ("*Depression in Survivors*") ("[S]urvivors of male violence fear their credibility will be questioned or they will be partly blamed for what happened to them. For example, most rape survivors who had contacted legal or medical services had two or more experiences that left them feeling revictimized.").

[18] C. Rennison, U.S. Dep't of Justice, Bureau of Justice Statistics, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992–2000* 3 (2002), http://www.bjs.gov/content/pub/pdf/rsarp00.pdf ("The closer the relationship between the female victim and the offender, the greater the likelihood that the police would not be told about the rape or sexual assault. When the offender was a current or former husband or boyfriend, about three-fourths of all victimizations were not reported to police (77% of completed rapes, 77% of attempted rapes, and 75% of sexual assaults not reported)").

[19] *2015 Texas Report* at 47.

assess.[20] As the Texas Department of Public Safety has explained,"[f]orcible rape differs from other violent crimes because, in many cases, the victim is hesitant to report the offense to police. The rigors of court procedures, embarrassment and fear of any accompanying stigma exert a deterrent effect upon the victim's willingness to contact the police. The presence of a prior relationship between the victim and offender may make the determination of force difficult to establish, while the usual clandestine nature of this crime presents a problem in verification."[21]

1. Most Rapes and Sexual Assaults Are Committed by Family Members or Acquaintances.

Stranger rape is a serious issue, but most rapes and sexual assaults are committed by intimates, family members and acquaintances, despite the stereotypical image of rape that envisions a woman attacked by a stranger while walking alone down a dark street late at night. In Texas, however, the incidence of stranger rape appears to be somewhat higher than the national average of 14 percent:[22] nineteen percent of rape or attempted rape victims in Texas report having been

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[20] Texas Primary Prevention Planning Committee, *Preventing Sexual Violence in Texas, A Primary Prevention Approach 2010-2018* 22 (2009), http://tinyurl.com/phrbnuw.

[21] Texas Dep't of Pub. Safety, *2013 Crime in Texas* 16, http://dps.texas.gov/crimereports/13/citCh3.pdf ("*2013 Crime in Texas*").

[22] Centers for Disease Control and Prevention, *Sexual Violence Facts at a Glance* 1 (2012), http://www.cdc.gov/violence prevention/pdf/sv-datasheet-a.pdf ("*CDC Sexual Violence Fact Sheet 2012*"); *CDC 2010 National Sexual Violence Report* at 21-22. *See also CDC 2011 National Sexual Violence Report* at 7.

assaulted by a stranger.[23] In 2015, 34% of Texas women reported that their sexual assault (the broader category of sexual violence, not limited to rape) was committed by a stranger.[24] Still, most rapes and other sexual assaults are committed by someone known to the victim, often her intimate partner, a family member, or a date.

Nationally, the weighted average of 11 major studies shows that approximately 36% of all rapes are committed by intimate partners.[25] A national 2011 CDC study reported that the majority of victims of all types of sexual violence were at least acquainted with their attackers.[26] This is also true in Texas: a 2003 survey in Texas showed that 53% were attacked by intimate partners or relatives, 53% by acquaintances, and 19% by strangers, with many having been attacked more than once, thus accounting for the total exceeding 100%.[27]

Sexual assaults of all types are also closely associated with domestic violence. Approximately 40 to 50% of battered women are also sexually assaulted

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[23] *2003 Texas Survey* at 17.

[24] *2015 Texas Report* at 29. The 2015 Texas Report primarily reports data for a broad category of sexual assault, including rape, attempted rape, sexual battery and other offenses; precise data on rapes is not always available. Many survey respondents reported multiple sexual assualts, so that the total exceeded 144%.

[25] M. Bagwell-Gray et al., *Intimate Partner Sexual Violence: A Review of Terms, Definitions, and Prevalence*, 16 TRAUMA, VIOLENCE, & ABUSE 316, 328 (2015).

[26] *CDC 2011 National Sexual Violence Report* at 6.

[27] *2003 Texas Survey* at 17; *see also 2015 Texas Report* at 29, for 2015 figures for sexual assault (rapes not reported separately).

by their intimate partner.[28] The CDC estimates that, over their lifetime, women have an approximately 9% chance of being subjected to a completed rape by an intimate partner.[29]

2. Young, Minority, and Low-Income Women Are Among Those Most at Risk of Rape and Other Sexual Assaults.

All women and girls are at risk of rape, but certain groups of women are particularly vulnerable. Those at heightened risk include young women,[30] women attending college,[31] minority women,[32] low-income women,[33] women and girls with developmental disabilities,[34] and women in rural areas.

Young women comprise an especially vulnerable group. According to national studies, nearly 80% of

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[28] J. McFarlane et al., *Intimate Partner Sexual Assault Against Women: Frequency, Health Consequences, and Treatment Outcomes*, 105 OBSTETRICS & GYNECOLOGY 99, 99 (2005).

[29] *CDC 2011 National Sexual Violence Report* at 9.

[30] *CDC 2010 National Sexual Violence Report* at 25.

[31] *CDC Sexual Violence Fact Sheet 2012* at 1 (Nationally, "37.4% of female rape victims were first raped between ages 18-24. In a study of undergraduate women, 19% experienced attempted or completed sexual assault since entering college.") (internal citations omitted).

[32] *CDC 2011 National Sexual Violence Report* at 5.

[33] *Female Victims of Sexual Violence, 1994-2010* at 4.

[34] E. Harrell, U.S. Dep't of Justice, Bureau of Justice Statistics, *National Crime Victimization Survey: Crime Against Persons with Disabilities, 2008-2010*—Statistical Tables 7 (2011), http://www.bjs.gov/content/pub/pdf/capd10st.pdf (the rate of rape of persons with disabilities is double the rate for persons without disabilities).

female victims of completed rape were first raped before their 25th birthday. More than 40% were raped before they turned 18 and, even more shockingly, one out of nine before age 11.[35] In the United States, as many as 25% of all girls experience sexual violence before age 18.[36] In Texas, in 2007 for example, 14% of high school females reported being "physically forced to have sexual intercourse when they did not want to."[37] As many as one-quarter of women become victims of some type of sexual assault (using the broader category) while at college.[38]

Women in racial and ethnic minorities also are at heightened risk. According to the CDC, while about 20% of women in various racial and ethnic groups experience rape at some point in their lives, "[m]ore than one-quarter of women (26.9%) who identified as American Indian or as Alaska Native and 1 in 3 women (33.5%) who identified as multiracial non-

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[35] *CDC 2010 National Sexual Violence Report* at 25; *Sex Offenses and Offenders* at 3.

[36] N. Kellogg, *The Evaluation of Sexual Abuse in Children*, 116 PEDIATRICS 506, 506 (2005), http://pediatrics.aappublications.org/content/116/2/506.

[37] Texas Dep't of State Health Servs., Texas Youth Behavior Risk Surveillance System (YRBSS), *Summary Tables*, (2014), http://www.dshs.state.tx.us/chs/yrbs/query/yrbss_form.shtm (last visited Dec. 30, 2015).

[38] B. Fisher et al., U.S. Dep't of Justice, Bureau of Justice Stats., *The Sexual Victimization of College Women* 10 (2000), https://www.ncjrs.gov/pdffiles1/nij/182369.pdf ("[T]he percentage of completed or attempted rape victimization among women in higher educational institutions might climb to between one-fifth and one-quarter.").

Hispanic reported rape victimization in their lifetime."[39]

Low-income women, regardless of race or ethnicity, are almost twice as likely to experience rape and other sexual victimization because of their environment, including unsafe housing and transportation, and lack of access to resources.[40] "In 2005-10, females in households earning less than $25,000 per year experienced 3.5 rapes or other sexual assaults per 1,000 females," compared to 1.9 per 1,000 or less for households with higher earnings.[41]

Of particular significance in this case, the average annual incidence of sexual violence against women in rural areas (3.0 per 1,000) now outpaces the rates for both urban (2.2 per 1,000) and suburban (1.8 per 1,000) regions.[42] Almost 97% of Texas qualifies as rural, which excludes all towns and cities with more than 2,500 residents.[43] Texas has the nation's largest rural population, at more than 3.8 million in 2010,[44] and thus more rural women than any other state. Because rural women suffer a higher rate of all types

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[39] *CDC 2010 National Sexual Violence Report* at 3, 20.

[40] *Female Victims of Sexual Violence, 1994-2010* at 4; D. Greco et al., Pennsylvania Coalition Against Rape, Poverty and Sexual Violence, *Poverty and Sexual Violence: Building Prevention and Intervention Responses* 8 (2007), http://tinyurl.com/qjr69b3 ("*Building Prevention*").

[41] *Female Victims of Sexual Violence, 1994-2010* at 4.

[42] *Id.*

[43] *See* U.S. Census Bureau, *2010 Census Urban and Rural Classification and Urban Area Criteria*, https://www.census.gov/geo/reference/ua/urban-rural-2010.html (last revised Feb. 9, 2015).

[44] *Id.*

of sexual assault, including rape, they will be particularly impacted by H.B. 2's closure of all but one clinic in smaller cities of the Rio Grande Valley and other rural areas.[45] As a result of H.B. 2's provisions and restrictions, women in rural areas will have to travel up to 400 miles to reach the nearest abortion clinic.[46]

As a result of their location, rural rape victims may also face difficulties in reporting their rape and obtaining help from police, hospitals and social services. These barriers include the cost and time involved in traveling substantial distances to seek help, possible concerns about their immigration status, and fear of further assaults if the assailant is a family member or acquaintance and the police are too far away to respond in time. All of these factors serve to multiply the impact of the loss of reproductive health services and access to abortion resulting from closure of their nearby clinics.

B. Rape and a Resulting Rape-Related Pregnancy Are Severely Traumatizing.

Even without the additional pressures of a resulting pregnancy, rape has been characterized as "one of the

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[45] *See* C. Feibel, National Public Radio, *Supreme Court Reprieve Lets 10 Texas Abortion Clinics Stay Open For Now*, (July 1, 2015), http://www.npr.org/sections/health-shots/2015/06/30/418776137/u-s-supreme-court-places-a-stay-on-texas-abortion-law (last visited Dec. 30, 2015); A. Thomson-DeVeaux, *The Last Rural Abortion Clinics in Texas Just Shut Down*, THE AM. PROSPECT (Mar. 6, 2014), http://prospect.org/article/last-rural-abortion-clinics-texas-just-shut-down (last visited Dec. 30, 2015) ("*Rural Abortion Clinics*").

[46] Texas Pol'y Evaluation Project, U. of Texas, *Research Brief: Impact of Abortion Restrictions in Texas* 1 (2013), http://tinyurl.com/oodunyz.

most severe of all traumas, causing multiple, long-term negative outcomes,"[47] and each victim's response and recovery are deeply personal. Pregnancy adds to the intense psychological and physical challenges inflicted by rape.

Rape victims suffer from an array of severe psychological and physical problems, including post-traumatic stress disorder, depression, substance abuse, suicidality, repeated sexual victimization, and chronic physical health problems.[48] As many as 90% experience PTSD following the assault, with symptoms continuing for months or years.[49] Even conservative estimates put the prevalence of PTSD for rape victims between 32%–80%, whereas the prevalence of PTSD in the general population is 9%–15%.[50] Women who have been raped are also three times more likely to suffer from depression and four to nine times more likely to

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[47] R. Campbell, *The Psychological Impact of Rape Victims' Experiences with the Legal, Medical, and Mental Health Systems*, 63 AM. PSYCHOLOGIST 702, 703 (2008) (citing D. Kilpatrick et al., *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 J. TRAUMATIC STRESS 119, 126-30 (2003)).

[48] *Id.*; *see also Depression in Survivors* at 133; K. Basile et al., *Sexual Violence Victimization of Women: Prevalence, Characteristics, and the Role of Public Health and Prevention*, 5 AM. J. LIFESTYLE MED. 407, 410 (2011); N. Sarkar et al., *Sexual Assault on Woman: Its Impact on Her Life and Living in Society*, 20 SEXUAL & RELATIONSHIP THERAPY 407 (2005); L. Chen et al., *Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders: Systematic Review and Meta-Analysis*, 85 MAYO CLINIC PROC. 618 (2010).

[49] *Depression in Survivors* at 133 (internal citations omitted).

[50] M. Munro, *Barriers to Care for Sexual Assault Survivors of Childbearing Age: An Integrative Review*, 2 WOMEN'S HEALTHCARE 19, 19 (2014), http://npwomenshealthcare.com/wp-content/uploads/2014/10/SA-Surv_N14.pdf.

contemplate suicide than those who have not experienced a sexual assault.[51]

These issues are compounded by pregnancy resulting from rape, which has been documented to be more common than pregnancy following consensual sex: between five and ten percent of rape victims nationwide become pregnant.[52] This means that, conservatively, rape results in 32,100 pregnancies annually—and that number may in fact be considerably higher.[53] Rates of unwanted pregnancy following rape are higher among adolescent victims because they have a relatively low use of contraception and may be higher among other women because they are deprived of the ability to avoid sex during ovulation.[54]

C. Rape Victims Often Seek Abortion to Terminate Rape-Related Pregnancies.

In the throes of dealing with the trauma of rape, victims have a small window of time to address a

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[51] *Id.*; WORLD REPORT ON VIOLENCE AND HEALTH 163 (E. Krug et al. eds., 2002); *see also* J. Tomasula et al., *The Association Between Sexual Assault and Suicidal Activity in a National Sample*, 27 SCH. PSYCHOL. Q. 109, 115 (2012).

[52] *See* M. Holmes *et al.*, *Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women*, 175 AM. J. OBSTETRICS & GYNECOLOGY 320, 322 (1996) [Holmes, *"Rape-Related Pregnancy"*] (national rape-related pregnancy rate is 5.0% per rape among victims of reproductive age); *Rape-Pregnancy Rates* at 4 (overall per-incident pregnancy rate following rape may be as high as 8%); *2015 Texas Report* at 31 (pregnancy rate following rape may be as high as 10%).

[53] Holmes, *Rape-Related Pregnancy* at 322.

[54] Am. C. Obstetricians and Gynecologists, *Committee Opinion No. 592: Sexual Assault* 2 (2014), https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co592.pdf; *Rape-Pregnancy Rates* at 11.

resulting pregnancy. Rape-related pregnancies are often discovered within 11 weeks of conception; however, in at least one-third of cases, rape victims do not realize they are pregnant until they have already entered the second trimester (12 to 26 weeks after the rape).[55] Emergency contraception is no longer an option for these women.[56]

The American College of Obstetricians and Gynecologists recommends that all rape victims be given access to emergency contraception within the 72 hours following the assault. However, many hospital emergency departments, particularly those with religious affiliations, do not provide emergency contraceptive services to rape victims. In addition, many victims do not seek immediate medical attention at an emergency room; thus they lack this opportunity to take early preventative measures that should obviate the need for abortion services later.[57]

It comes as no surprise that many rape victims choose to terminate their pregnancies.[58] As many as

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[55] Holmes, *Rape-Related Pregnancy* at 322.

[56] J. Trussell et al., *Emergency Contraception: A Last Chance to Prevent Unintended Pregnancy* 1, 3, 5 (Sept. 2015), http://ec.princeton.edu/questions/ec-review.pdf ("*Emergency Contraception*"); I. Rodrigues et al., *Effectiveness of Emergency Contraceptive Pills Between 72 and 120 Hours After Unprotected Sexual Intercourse*, 184 AM. J. OBSTETRICS & GYNECOLOGY 531 (2001).

[57] *Emergency Contraception*, at 11; National Sexual Violence Resource Center, et al., *Preventing Pregnancy from Sexual Assault: Four Action Strategies to Improve Hospital Policies on Provision of Emergency Contraception* at 57, 73, 78, 85 (2003).

[58] R. Perry et al., *Prevalence of Rape-Related Pregnancy as an Indication for Abortion at Two Urban Family Planning Clinics*, 91 CONTRACEPTION 393, 393 (2015).

50% of rape-related pregnancies are terminated by induced abortion.[59] This rate compares to a general incidence of induced abortion of approximately 18%.[60]

D. Rape Victims Facing Rape-Related Pregnancies Resulting from Domestic Violence Confront Special Challenges.

The decision to seek abortion services after a rape frequently is influenced by whether the victim has an existing relationship with the perpetrator. As noted above, at least 78% of perpetrators are intimate partners, relatives, or friends of the victim.[61] An estimated 10-14% of married women are raped by their husbands.[62] Relationships in which marital rape has occurred tend to be more severely physically violent,[63]

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[59] Holmes, *Rape-Related Pregnancy* at 322.

[60] Guttmacher Inst., *State Facts About Abortion: Texas,* (2014), http://www.guttmacher.org/pubs/sfaa/texas.html (last visited Dec. 30, 2015).

[61] Holmes, *Rape-Related Pregnancy* at 322.

[62] R. Bergen, Nat'l Resource Center on Domestic Violence, *Marital Rape: New Research and Directions* 1 (Feb. 2006), http://www.vawnet.org/Assoc_Files_VAWnet/AR_MaritalRapeRevised.pdf ("*Marital Rape*") (citing D. FINKELHOR ET AL., LICENSE TO RAPE: SEXUAL ABUSE OF WIVES (1985) and D. RUSSELL, RAPE IN MARRIAGE (1990)); *Sexual Violence Victimization* at 411; K. Basile, *Prevalence of Wife Rape and Other Intimate Partner Sexual Coercion in a Nationally Representative Sample of Women,* 17 VIOLENCE & VICTIMS 511 (Oct. 2002).

[63] J. Bennice et al., *Marital Rape: History, Research and Practice,* 4 TRAUMA, VIOLENCE, & ABUSE 228, 239 (2003) ("*Marital Rape History*") (citing J. Bennice et al., *The Relative Effects of Intimate Partner Physical and Sexual Violence on PTSD Symptomology*, 18 VIOLENCE & VICTIMS 87 (2003)).

and between 33% to 50% of battered women have been raped one or more times by their batterers.[64]

Studies confirm that "women with abusive partners are substantially over-represented among abortion patients."[65] Abusive intimate partners often attempt to dominate a woman's reproductive choices, denying them access to contraception and using sexual violence as a means of control.[66] Multiple studies have found that victims cite intimate partner violence as a reason for seeking to terminate a pregnancy, and "rape-related pregnancy had a particularly high chance of leading to [termination of pregnancy]."[67]

Rape victims in abusive relationships thus confront not only the trauma of rape itself, but also the ongoing

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[64] M. Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 54 HASTINGS L. J. 1463, 1500 (2003); *Marital Rape* at 2-3.

[65] R. Jones et al., *More Than Poverty: Disruptive Events Among Women Having Abortions in the USA*, J. FAM. PLAN. & REPROD. HEALTH CARE, 2 (2012), http://jfprhc.bmj.com/content/early/2012/09/04/jfprhc-2012-100311.full.pdf+html (last visited Dec. 30, 2015).

[66] E. Miller et al., *Pregnancy Coercion, Intimate Partner Violence, and Unintended Pregnancy*, 81 CONTRACEPTION 316 (2010), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2896047/; M. Hall et al., *Associations between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLOS MED. (2014), http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001581 (last visited Dec. 30, 2015) ("*Intimate Partner Violence Meta-Analysis*"); *Marital Rape* at 4; *Marital Rape History* at 228-46; K. Eby et al., *Health Effects of Experiences of Sexual Violence for Women with Abusive Partners*, 16 HEALTH CARE FOR WOMEN INT'L 563, 563-76 (1995).

[67] *Intimate Partner Violence Meta-Analysis* at 15.

trauma of their abuse. The pregnancy may put the victim at greater risk of violence, and having a baby from an unwanted pregnancy may result in sustained physical violence over time.[68] Some victims perceive that having a baby will "tether them to an abusive partner" and seek abortions as part of an effort to escape the abusive environment and to prevent exposing children to that same abuse.[69] Data show that women who have an abortion under these circumstances "were more able to escape abusive relationships."[70]

E. The Challenged Provisions of H.B. 2 Will Force Rape Victims to Carry Unwanted Pregnancies.

The challenged provisions will disproportionately affect rape victims, who face significantly greater difficulty accessing safe and prompt abortion. For some women, the lack of access to nearby abortion clinics will likely leave them no safe choice other than bearing the children of their rapists.

All women seeking an abortion in Texas already face significant barriers to access. For example, Texas law

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[68] S. Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 BMC MED. 144 (2014), http://www.biomedcentral.com/1741-7015/12/144 (last visited Dec. 30, 2015) ("*Risk of Violence*").

[69] R. Sherman, *For Survivors of Abuse, Access to Abortion Can Be a Lifesaver*, RH Reality Check, Oct. 8, 2014, http://rhrealitycheck.org/article/2014/10/08/survivors-abuse-access-abortion-can-lifesaver/ (last visited Dec. 23, 2015) ("*Survivors of Abuse*"); *Risk of Violence*; K. Chibber, *The Role of Intimate Partners in Women's Reasons for Seeking Abortion*, 24 WOMEN'S HEALTH ISSUES 131 (2014).

[70] *Survivors of Abuse*.

mandates a 24-hour waiting period for all abortions, triggered by the woman's in-office consultation and a required ultrasound.[71] More than half of the facilities providing abortion services in Texas have closed since 2013.[72] One study found that some women traveled as far as 400 miles to reach the nearest clinic.[73] Nearly half of women experienced some out-of-pocket expenditures for the required consultation visit, and then additional costs for the actual services.[74] With the decrease in the number of clinics in Texas, the average wait time for an appointment has grown substantially. In some cities, wait times may be as long as 23 days.[75]

These burdens fall heavily on poor populations of women. Texas "has one of the nation's highest teen birth rates and percentages of women living in poverty."[76] Nationally, women in households with income less than $25,000 are almost twice as likely to be victims of sexual assault, meaning the most

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[71] Tex. Health & Safety Code § 171.012.

[72] D. Grossman et al., *Texas Policy Evaluation Project Research Brief: Knowledge, Opinion and Experience Related to Abortion Self-Induction in Texas*, 4 (Nov. 17, 2015), http://tinyurl.com/prvh4hc ("*Knowledge, Opinion and Experience*").

[73] Texas Policy Evaluation Project, U. of Texas, *Research Brief: Impact of Abortion Restrictions in Texas*, (2013), http://tinyurl.com/oodunyz.

[74] *Id.*

[75] D. Grossman et al., *Texas Policy Evaluation Project, Research Brief: Abortion Wait Times in Texas: The Shrinking Capacity of Facilities and the Potential Impact of Closing Non-ASC Clinics* (Oct. 5, 2015), http://tinyurl.com/ha69r5r.

[76] A. Flynn, *New Texas Abortion Law Punishes the Poor*, SALON (July 7, 2013), http://www.salon.com/2013/07/07/new_texas_abortion_law_punishes_poor_women_partner/ (last visited Dec. 22, 2015).

vulnerable population is the least likely to be able to afford health care services or the costs associated with travel to clinics to obtain the services they need.[77] Abortion costs rise the longer a pregnancy progresses. In 2006, for example, the median cost for a first trimester abortion at 10 weeks was $430.[78] That cost increased with gestational age, and abortions at 20 weeks cost roughly three times that amount.[79] In fact, rape victims face thousands of dollars of expenses following rape—regardless of pregnancy—including expenses such as medical and mental health bills, property losses, and reduced productivity.[80] Of course, if a rape victim is unable to obtain an abortion at a nearby clinic, the costs of raising a child would be exponentially higher. Thus the challenged provisions would exacerbate many rape victims' already tenuous financial position.

These cost, delay and access problems affect all rape victims living outside the handful of Texas cities that will still have abortion clinics, whether those victims are raped by a stranger or by someone they know. H.B. 2 will make access to *nearby* legal abortion services difficult or impossible for women located in most of the state.

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[77] *Female Victims of Sexual Violence, 1994-2010* at 4. The *2015 Texas Report* suggests the correlation between income level and incidence of rape may have declined, but that result may be due to study design. *See 2015 Texas Report* at 51.

[78] R. Jones et al., *Abortion in the United States: Incidence and Access to Services, 2005*, 40 PERSPS. ON SEXUAL & REPROD. HEALTH 6, 14 (2008), https://www.guttmacher.org/pubs/journals/4000608.pdf.

[79] *Id.*

[80] *Building Prevention* at 81.

Women who have been raped by their intimate partners are likely to experience even greater problems than other rape victims as a result of enactment of H.B. 2.[81] Abusers often attempt to control women by limiting access to money and transportation, keeping close watch on their activities and time,[82] and threatening to harm or kidnap their children.[83] These tactics particularly effective at controlling women who are immigrants or whose first language is not English.[84] These women likely never will be able to access abortion services that only are offered in distant clinics requiring hours of travel and overnight stays out of town.

These barriers to access are compounded by the struggles inherent in recovery from rape, because most rape victims suffer from post-attack trauma, such as PTSD.[85] Having to struggle to obtain medical

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[81] *See* K. Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 S.M.U. L. REV. 2117, 2126-27, 2138-39 (1993) ("*Culture of Battering*") (describing how hard it is for abused women to leave, both because of their abusers' control and the risk of extreme harm or even death if they attempt to leave); E. Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 985 (1995).

[82] *Culture of Battering* at 2121-22, 2131-32; *see also* L. GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 42 (2011) (describing how these behaviors contribute to an abused woman's economic insecurity, making it even more difficult to leave the relationship).

[83] *Culture of Battering* at 2122-23.

[84] *See, e.g.*, M. Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245, 251-56 (2000).

[85] *Depression in Survivors* at 130-42.

care unnecessarily adds to victims' psychological stress and will dissuade women from obtaining medical care they would otherwise seek.

Given that many rape victims already are hesitant to contact the authorities,[86] the reduced availability of legal abortion services under H.B. 2 will further deter victims from seeking help. Confronted with an unwanted pregnancy and a lack of available abortion services, some women resort to procedures that may endanger their health. For example, Texas's Rio Grande Valley "already has one of the highest rates of self-induced abortion in the country."[87] Before H.B. 2, when the Rio Grande Valley still was served by two clinics instead of just the one remaining clinic in McAllen,[88] "12 percent of women in clinics near the Mexico border said they had attempted to end their pregnancy on their own before seeking professional help, . . . using methods [that] could be fatal."[89] Even before H.B., self-induced abortions were more common in Texas overall than in other states.[90]

Victims without access to nearby legal abortion services will have to overcome significant obstacles to

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[86] *2013 Crime in Texas* at 16.

[87] *Rural Abortion Clinics*.

[88] Two clinics in the Rio Grande Valley closed in 2013. D. Grossman et al., *Change in Abortion Services After Implementation of a Restrictive Law in Texas*, 90 CONTRACEPTION 496, 496 (2014). The McAllen clinic has since reopened, but under the Fifth Circuit's decision, only one doctor (rather than the full staff) would be authorized to perform abortions, and such services could only be provided to women who lived nearby, thus excluding other women living in the Rio Grande Valley. *See* App. 71a.

[89] *Rural Abortion Clinics*.

[90] *Knowledge, Opinion and Experience* at 1.

obtain an abortion; if they cannot obtain an abortion due to access restrictions, they may be forced to bear the children of their rapists. Reducing access to abortion services deprives rape victims of the right to exert control over their own bodies, re-traumatizing them and potentially exposing them to ongoing physical violence. Individually and cumulatively, these effects place an undue burden on rape victims.

F. By Forcing Victims to Continue Unwanted Pregnancies H.B. 2's Restrictions Will Cause Significant Negative Health Consequences.

The additional obstacles to obtaining a legal abortion imposed by H.B. 2's challenged restrictions exacerbate rape trauma and, by restricting access, lengthen the time a woman must carry her rape-related pregnancy. Such emotional distress and delays also increase the health risks of the pregnancy itself. Each week of delay in obtaining an abortion materially increases the risk of serious health complications from the procedure.[91]

A woman's choices about how she may terminate her rape-related pregnancy also become more limited later in the pregnancy, and those options are more physically and mentally traumatic and pose greater

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[91] L. Finer et al., *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 CONTRACEPTION 334, 334 (2006) (citing L. Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 OBSTETRICS & GYNECOLOGY 729, 729–37 (2004) (from 1988-1997, the overall death rate for women obtaining legally induced abortions was 0.7 per 100,000 legal induced abortions. The risk of death increased exponentially by 38% for each additional week of gestation.)).

risk than the options available early in pregnancy. For example, many women prefer medical abortions (those performed using medication only, without the need for any surgery) because they are less invasive and more under the woman's own control. But medication abortions become less effective later in pregnancy, and thus are generally not performed in America after nine weeks of pregnancy.[92] At that point, women who preferred an abortion without surgery will no longer have that option and instead will require surgical abortions.[93]

The inherent risks in all pregnancies may pose more dangers for victims of rape. A woman who has been raped and intends to have an abortion may not seek prenatal care. Some pregnancies develop abnormally and pose serious health risks to women. Consequently, abnormally developing pregnancies with serious risks of material complications may not be identified before they become serious and even life-threatening. For example, ectopic pregnancy, in which the pregnancy develops outside the uterus, can result in rupture of the fallopian tubes and life-threatening bleeding if it is allowed to continue, occurs in approximately 2% of all pregnancies and remains a leading cause of death in the first trimester.[94] Because

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[92] M. Creinin et al., *Medical Abortion in Early Pregnancy*, in MANAGEMENT OF UNINTENDED AND ABNORMAL PREGNANCIES: COMPREHENSIVE ABORTION CARE 126 (M. Paul et al., eds., 2009).

[93] This loss of choice is particularly unfortunate because medical abortion "may be the best option in some situations such as very early pregnancy, marked obesity that limits visualization of the cervix, or obstructive uterine fibroids that make access to the pregnancy more difficult or infeasible." *Id.* at 137.

[94] J. Kulp et al., *Ectopic Pregnancy*, in MANAGEMENT OF UNINTENDED AND ABNORMAL PREGNANCIES: COMPREHENSIVE ABORTION CARE 280 (M. Paul et al., eds., 2009) ("*Unintended*

most women seek abortion services early in the pregnancy, providers have an opportunity to decrease deaths caused by ectopic pregnancies.[95] Limiting access to legal abortion services delays abortions for women who have been raped, unnecessarily adding to the risk of harm to women who are pregnant as a result of rape.[96]

Additionally, women with preexisting conditions like diabetes or hypertension are at increased risk from pregnancy.[97] As with other complications, the probability of experiencing a pregnancy-related health problem increases in later pregnancy. Most of the 3 to 5% of pregnant women who develop gestational diabetes do so after 24 weeks of pregnancy;[98] the majority of the 5 to 8% of pregnant women who develop preeclampsia (pregnancy-induced hypertension) do so after 20 weeks.[99] Thus, readily available legal abortions close to women's homes affords them the

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Pregnancies"); *see generally* D. Grimes, *Estimation of Pregnancy-Related Mortality Risk by Pregnancy Outcome, United States, 1991 to 1999,* 194 AM. J. OBSTETRICS & GYNECOLOGY 92, 92-94 (2006).

[95] *See Unintended Pregnancies* at 280.

[96] *See id.* at 280 (discussing abortion provider's ability to decrease ectopic pregnancy morbidity through early diagnosis and treatment).

[97] *Id.* at 81-83.

[98] *See* Cleveland Clinic, Gestational Diabetes, http://my.clevelandclinic.org/health/diseases_conditions/hic_Diabetes_Basics/hic_Gestational_Diabetes?utmcampaign (last visited Dec. 28, 2015).

[99] *See* Preeclampsia Foundation, *About Preeclampsia*, http://www.preeclampsia.org/health-information/about-preeclampsia (last visited Dec. 23, 2015).

option of terminating their rape-related pregnancies before serious complications arise.

The health risks arising from a delay in terminating rape-related pregnancies are even more significant for women who were raped by their intimate partners or family members. Pregnant women experience high rates of severe domestic violence, often resulting in serious injuries to the woman and her pregnancy.[100] Women who are abused during pregnancy are more likely to experience poor birth outcomes, miscarriage, and stillbirth.[101] Pregnant women in abusive relationships also risk being killed by their abusers;[102] in the United States, homicide is a leading cause of the deaths of pregnant women.[103] Making safe and legal abortion more difficult to obtain thus may result in more violence against women who are pregnant because they were raped by their intimate partners or family members.

Finally, women who are unable to access safe and legal abortions in Texas and, thus, who carry their rape-related pregnancies to term and bear their rapists' children, also will suffer long-term negative health effects. Rape victims who carry their rape-related pregnancies to term must cope with the effects

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[100] *See, e.g.*, D. Tuerkheimer, *Conceptualizing Violence Against Pregnant Women*, 81 IND. L.J. 667, 670 (2006) ("*Conceptualizing Violence*").

[101] *Id.* at 672-73.

[102] *Id.*; *see also* A. Camp, *Coercing Pregnancy*, 21 WM. & MARY J. WOMEN & L. 275, 296 (2015).

[103] P. Janssen et al., *Intimate Partner Violence and Adverse Pregnancy Outcomes: A Population-Based Study*, 188 AM. J. OBSTETRIC, GYNECOLOGIC, & NEONATAL NURSING 1341, 1346-47 (2003); *see also Conceptualizing Violence* at 672.

of either raising or adopting out children conceived through rape.[104] Both of these choices are additional life-altering experiences, that, for many women, are traumatic for years if not a lifetime.[105]

The trauma of carrying and bearing a child conceived by rape is not just mental; it also may be legal. Women who raise the children conceived by their rapists may be legally tied to their rapists by virtue of the rapists' genetic parenthood.[106] Women who were raped by their intimate partners also are heavily impacted; they may find it more difficult to leave relationships with abusive intimate partners and seek safety, when they have given birth to and are raising their abuser's child.[107]

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[104] *See* Holmes, *Rape-Related Pregnancy* at 322 (just under six percent of women in this study gave up for adoption their children conceived through rape).

[105] H. Haskren et al., *Postadoptive Reactions in the Relinquishing Mother: A Review*, 28 J. OBSTETRICAL & GYNECOLOGICAL NURSING 395, 396-399 (1999) (noting that "a woman who . . . relinquishes her child is at risk for the additional emotional stress of long-term grief").

[106] *See* S. Prewitt, *Giving Birth to a "Rapist's Child": A Discussion and Analysis of the Limited Legal Protections Afforded to Women Who Become Mothers Through Rape*, 98 GEO. L. J. 827, 844-45 (2010). In certain circumstances, Texas law does allow rape victims to terminate their rapist's parental rights within two years of the child's birth upon clear and convincing evidence of the rape. Tex. Fam. Code § 161.007.

[107] *See, e.g.*, N. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1051 (1991) (describing the legal difficulties faced by abused women who try to leave and take their children with them and also the reluctance of abused women to flee without their children); *see also* S. Buel, *Fifty Obstacles to*

Thus, any additional time that rape victims are unnecessarily pregnant because of the unavailability of safe and legal abortion services increases the chances that they will suffer significant health problems that could have been avoided if abortion services were more readily available in the areas in which they live. No woman should be forced or effectively forced to carry a rape-related pregnancy for any longer than she chooses to do so. By severely limiting the health care options of rape victims, the challenged restrictions impermissibly place an undue burden on women.

CONCLUSION

For the foregoing reasons, the Texas Association Against Sexual Assault and the other *Amici Curiae* respectfully submit that the judgment of the United States Court of Appeals for the Fifth Circuit should be reversed.

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